

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL BIZOVI,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2005

No. 250522

Wayne Circuit Court

LC No. 01-002511-01

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from a sentence of 6 to 15 years imposed on his plea-based conviction of assault with intent to rob while unarmed, MCL 750.88. We remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to rob while armed, MCL 750.89, and the prosecutor filed a notice of sentence enhancement as an habitual offender, fourth offense. MCL 769.12. In exchange for dismissal of a second charge of assault with intent to rob while armed and dismissal of the habitual offender notice, defendant pleaded no contest to a reduced charge of assault with intent to rob while unarmed. The agreement further provided that defendant would testify truthfully in a pending murder trial. In addition, the parties agreed to a prison term of 6 to 15 years. The six-year minimum sentence was predicated on the assumption that defendant would receive approximately eighteen months' credit for time served, leaving approximately four-and-a-half years to be served on the instant offense, and the prosecutor specifically requested at sentencing that defendant be granted credit for time served. The court, which was unable to grant credit because defendant committed the instant offense while on parole, imposed the sentence agreed to by the parties.

The parties agree that, although not specifically stated in the written plea agreement or on the record at the plea proceeding, part of the plea agreement was that defendant receive credit for time served. The rules of fundamental fairness dictate that promises made during plea-bargaining should be respected, at least where the person who made the promise was authorized to do so and the defendant relied on the promise to his detriment. *People v Ryan*, 451 Mich 30, 41; 545 NW2d 612 (1996). Unfortunately, the plea agreement contained a term contrary to law. The law provides that in the case of a parolee, credit for time spent in jail on the subsequent offense is to be applied against the remaining portion of the sentence on the paroled offense.

*People v Watts*, 186 Mich App 686, 687; 464 NW2d 715 (1991); *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990).

The general rule is “that where a trial court substantially fails to fulfill a plea agreement, a reviewing court has discretion to choose between vacating the plea or ordering specific performance, with the defendant’s choice accorded considerable weight.” *People v Schluter*, 204 Mich App 60, 67; 514 NW2d 489 (1994). Defendant does not want the plea vacated. He has already fulfilled his part of the bargain and vacating the plea would subject him to prosecution on two greater offenses plus sentence enhancement as an habitual offender. On the other hand, specific performance cannot be ordered because the term to be enforced is contrary to law. Therefore, considering the unique circumstances of this case and taking into account the plea term at issue, we remanded for imposition of a sentence of four-and-a-half to fifteen years.

Remanded for resentencing in accordance with this opinion. Jurisdiction is not retained.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello